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Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

CR. APPEAL NO. 1197 OF 1997

1. Ramfal son of Babulal, aged 29 years, Agriculturist.
2. Narottam son of Kaleshar, aged 40 years, Agriculturist

Both resident of village Kutra PS Pamgarh, Tahsil Janjgir, Distt. Bilaspur, MP.

.. APPELLANTS

(IN JAIL)

VS.

THE STATE OF MP. ..RESPONDENT

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CRIMINAL PROCEDURE CODE:

7794

Filed on 18/6/97
by Shri R.P.S. Thakur
Advocate

Rbn. A.R.

(6)

(40)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Criminal Appeal No.1197 of 1997

Ramfal & another

- Versus -

The State of Madhya Pradesh (Now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
J U D G E
28.2.2006

HON'BLE SHRI JUSTICE DHIRENDRA MISHRA

Sd/-
Dhirendra Mishra
Judge

POST FOR JUDGMENT ON 2ND MARCH, 2006

Sd/-
L.C. Bhadoo
Judge

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HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

DIVISION BENCH*: -

HON'BLE SHRI L.C. BHADOO AND

HON'BLE SHRI DHIRENDRA MISHRA, JJ.

Criminal Appeal No.1197 of 1997

Ramfal & another

- Versus -

The State of Madhya Pradesh (Now Chhattisgarh)

Present: -

Mrs. Savita Tiwari, Advocate:	For the appellants.
Mr. U.N.S. Deo, Addl. Public Prosecutor with Mr. M.P.S. Bhatia, Panel Lawyer:	For the State/respondent.

J U D G M E N T

(Delivered on 2nd March, 2006)

The following judgment of the Court was delivered by ***L.C. Bhadoo, J.***: -

1. Accused/appellants namely Ramfal and Narottam have preferred this appeal under Section 374 (2) of the Code of Criminal Procedure questioning the legality & correctness of the judgment of conviction and order of sentence dated 21-5-97 passed by learned Additional Sessions Judge, Janjgir, District: Bilaspur, in S.T. No.326/90 whereby learned Additional Sessions Judge convicted and sentenced the accused/appellants and other co-accused persons as under:-

Conviction	**Sentence**
Appellant: Ramfal	
U/s 302 I.P.C. for the charge of committing murder of Ramnath	Imprisonment for life and fine of Rs.500/-, in default S.I. for 3 months.

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U/s 302 IPC for the charge of committing murder of Ransai	Imprisonment for life and fine of Rs.500/-, in default S.I. for 3 months.
U/s 307 IPC for the charge of attempt to commit murder of Dataram	R.I. for 7 years and fine of Rs.300/-, in default S.I. for one month.
U/s 148 IPC	R.I. for 4 months and fine of Rs.400/-, in default S.I. for 2 months.

Appellant: Narottam

U/s 302 IPC for the charge of committing murder of Ramnath	Imprisonment for life and fine of Rs.500/-, in default S.I. for 3 months.
U/s 302 IPC for the charge of committing murder of Ransai	Imprisonment for life and fine of Rs.500/-, in default S.I. for 3 months.
U/s 148 IPC	R.I. for 4 months and fine of Rs.400/-, in default S.I. for two months.

Accused: Baiyyan Bai

U/s 147 IPC	R.I. for 3 months and fine of Rs.300/-, in default, S.I. for one month.

Accused: Babulal, Ram Khilawan, Ramnath, Ramji, Dau, Purushottam, Ram Kumar, Raj Kumar, Dular

U/s 148 of the I.P.C.	R.I. for 4 months and fine of Rs.400/- each, in default, S.I. for two months each.

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Accused: Babulal

U/s 323 of the I.P.C. for causing injuries to Nirmali Bai	S.I. for 4 months and fine of Rs.200/-, in default, S.I. for one month.
U/s 323/149 of the I.P.C. for causing simple injuries to Ran Sai	S.I. for 4 months and fine of Rs.200/-, in default, S.I. for one month.

Accused: Ram Khilawan, Ramnath, Ramji, Dau @ Kaleshwar, Purushottam, Ram Kumar, Raj Kumar and Dular

U/s 323/149 of the I.P.C.	R.I. for 4 months and fine of Rs.200/- each, in default, S.I. for one month each.

It appears that the accused persons other than the appellants herein have not preferred any appeal.

2. Case of the prosecution, in brief, is that on 5-9-87 deceased Ran Sai, Ram Nath, injured Dataram, Nirmali Bai and Ahilya Bai were engaged in the work of weeding in the paddy crop of their agricultural filed Sevaikhar. On account of old animosity the accused persons who were 12 in number hiding themselves came on the place of occurrence armed with pharsi, axe, tabbal and lathi, they attacked Ramnath and others with the weapons of offences i.e. pharsi, axe, tabbal and lathi and committed murders of Ram Nath and Ran Sai. Both the hands of Dataram were amputed from the elbow joint. They also caused injuries to Nirmali Bai. Nand Kumar reported the matter to the Police Station Janjgir. Based on that S.H.O. Police Station Janjgir registered F.I.R. Ex.-P/1 and forwarded it to the Police Station Pamgarh for registering the case as the incident in question occurred in the jurisdiction of Police Station Pamgarh. The Station House Officer registered F.I.R. Ex.-P/2 for commission of offences under Sections 302, 307, 147, 148 and 149 of the I.P.C.. The Investigating Officer left for the place of

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occurrence, after giving notice to the Panchas, prepared Panchanama Ex.-P/6 of the body of Ran Sai. After giving notice, Panchanama Ex.-P/50 of the body of Ram Nath was prepared. He took into possession the plain soil and blood stained soil from the place of occurrence under Ex.-P/7, Ex.-P/8 and Ex.-P/10.

3. While in the police custody, accused Narottam gave a memorandum Ex.-P/11 regarding the place where he had kept weapon of offence i.e. axe and in pursuance of that he got recovered axe and one Sando Baniyan under Ex.-P/12. Accused Ramfal gave a memorandum Ex.-P/15 regarding the place where he had kept pharsi and in pursuance of that he got recovered pharsi under Ex.-P/16. The baniyan of accused Ramfal was taken into possession under Ex.-P/17. The clothes of deceased Ran Sai were taken into possession under Ex.-P/31. The clothes of deceased Ram Nath were taken into possession under Ex.-P/52. One Sari of Baiyyan Bai was taken into possession under Ex.-P/30. The statement (Ex.-P/33) of Dataram was recorded by Tehsildar, Janjgir. The dead body of Ram Nath was sent for postmortem examination to the Government Hospital, Janjgir where Dr. H. R. Tharwani (PW-12) conducted the postmortem and prepared the postmortem report Ex.-P/34. He opined that cause of death was shock due to external and internal haemorrhage as a result of injury on the neck. The mode of death was homicidal. The dead body of Ran Sai was also sent for the postmortem examination to the Government Hospital, Janjgir under Ex.-P/40 where Dr. U. C. Sharma (PW-15) conducted the postmortem and prepared the postmortem report Ex.-P/41. He opined that cause of death was shock and haemorrhage as a result of various injuries on his body. Injured Dataram was sent to the Assistant Surgeon, Government Hospital, Janjgir under Ex.-P/42. Dr. U.C. Sharma examined Dataram and gave injury report Ex.-P/43. He opined that injuries were grievous in nature and caused by hard and sharp object.

4. The site plan (Ex.-P/38) of the place of occurrence was prepared by Patwari. The recovered articles i.e. Tangia and Pharsi were sent for the doctor's opinion as to whether injuries on the body of Ram Nath could be caused by Pharsi and Tangia in question. The doctor gave his opinion (Ex-P/36 & Ex.-P/37) that the injuries found on the body of Ram Nath could be caused by the same. The recovered articles were sent for the chemical examination to the Forensic Science Laboratory, Sagar from where reports Ex.-P/57, Ex-P/58 and Ex.-P/59 were received.

5. After completion of the investigation, charge sheet was filed against 12 accused persons for commission of offences under Sections 147, 148, 302/149 and 307 of the I.P.C. in the Court of Judicial Magistrate, 1st Class, Janjgir who in turn committed the case to the Sessions Judge, Bilaspur from where learned Additional Sessions Judge, Janjgir received the case on transfer for trial. All the 12 accused persons were tried for the above offences before learned Additional Sessions Judge, Janjgir.

6. The prosecution in order to establish the charge against the accused persons examined 17 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the prosecution evidence appearing against them and pleaded innocence. Learned Additional Sessions Judge after hearing arguments of Additional Public Prosecutor and counsel for the accused persons convicted and sentenced the appellants and other accused persons as mentioned in para-1 of this judgment.

7. We have heard learned counsel for the parties.

8. The homicidal deaths of Ram Nath and Ran Sai and injuries sustained by Dataram are not in dispute.

9. As far as involvement of the accused/appellants in committing murders of Ram Nath and Ran Sai and attempting to commit murder of Dataram

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is concerned, the crime in question was witnessed by PW-4 Dataram injured witness, PW-5 Nirmala Bai and PW-6 Ahilya Bai. The matter was reported by PW-3 Nand Kumar who has stated that on 5-9-87 he went to his agricultural field of Naravakhar for the purpose of irrigation where Rajmati Bai informed him that your father, uncle and brother have been murdered on which he came to the residence where Kosamdeen informed that your father and uncle have been murdered and your brother is alive. 12 persons (Babulal & others) have committed murders of your uncle and father. He called the Kotwar and went to the police station Janjgir and lodged the report Ex.-P/1.

10. Learned counsel for the accused/appellants argued that in this case no independent witness has been examined. All the eyewitnesses are related and interested witnesses, therefore, reliance cannot be placed on their evidence.

11. The settled law on the point is that evidence of eyewitness cannot be discarded merely on the ground that the witnesses are relatives of complainant party but evidence of such witnesses should be scrutinized carefully in order to find out that there should not be any false implication. If the evidence of such related witnesses stood up to the test, inspires confidence and is worth reliance, then same should be believed and conviction can be based on such evidence. PW-4 Dataram is injured witness whose both the hands were amputed. He has stated that on the fateful day he, his uncle and father went for the purpose of weeding in the paddy crop. His wife Ahilya Bai and aunt Nirmali Bai reached the field in advance. When they were engaged in the work of weeding in the paddy crop, accused namely Babulal, Ram Khilawan, Ramfal, Ram Nath, Ramji, wife of Babulal Baiyyan Bai, Dau and his 5 sons namely Narottam, Purushottam, Ram Kumar, Raj Kumar, Ram Dular came in a circle, surrounded them and started assaulting them. His father Ran Sai and uncle Ram Nath were murdered. Thereafter he was attacked. The accused persons were armed with Lathi, Tabbal and axe.

His uncle Ram Nath's neck was cut and his father's both hands were amputed with a Tabbal by accused Ramfal. Accused Narottam attacked on the head of his father with axe and accused Ramfal amputed his both hands with the Tabbal. Blood started oozing out of the injuries. The accused persons were having old animosity against them as some criminal case was already going on against the accused in connection with beating them. One case under Section 107 of the Cr.P.C. was also pending at Pamgarh.

12. PW-5 Nirmala Bai who was also present in the field has stated that at about 10 a.m. accused Narottam armed with axe, Ramfal armed with pharsi, remaining accused persons armed with lathi came and surrounded them. First of all, Narottam assaulted Ran Sai with axe and Ramfal assaulted with pharsi as a result of which Ran Sai fell down. Other accused persons attacked him with lathi. Thereafter, Ramfal attacked with Pharsi and they started attacking Dataram. Narottam came and he again assaulted with axe and Ramfal amputed both the hands with Pharsi. She also sustained injuries and that was examined by the doctor in Janjgir Hospital. This witness has stated that the persons who were working across the canal in the agricultural field did not come and the persons who were working in the agricultural field were asked to go away. PW-6 Ahilya Bai has also corroborated the above evidence and stated that Ramfal and Narottam attacked with Tabbal and axe. The evidence of above 3 witnesses stands corroborated by the medical evidence of PW-12 Dr. H. R. Tharwani. He has stated that he conducted the postmortem on the dead body of Ram Nath on 6-9-87 and he found that there was incised wound in the size of 10"x4"x3" on the back side of neck and above thyroid cartilage. It was semilunar in shape. All structures were cut like vertebra from 2 to 5 cervical vertebra were cut. Carotid arteries and jugular veins were cut. Trachea and Larynx were cut. The Oesophagus was also cut. Neck was attached to body only by a small piece of skin. Clotted blood was

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present. There was incised wound in the size of 5"x1/2"x1/2" situated around anus. There was fracture of 2nd Coccyxeal bone and clotted blood was present. There was incised wound in the size of 5"x2"x2" situated on right side of right knee joint and there was fracture of medial condyle of right femur. There was cut mark situated in lateral side of right tibia. Clotted blood was present. All the injuries were ante-mortem in nature.

13. Dr. U. C. Sharma (PW-15) who conducted the postmortem on the dead body of Ran Sai and as per the report following injuries have been found:

(A) Incised wound on right elbow posterolateral in the size of 11 cm x 8 cm x 4 cm. Margins were cut. Muscles were cut and lacerated. All bones at elbow joint were cut. All arteries, nerves, veins were cut and limb was hanging with support of skin and slight muscle. Oozing of dark liquid blood still present. Bones were cut. Muscles were cut. Deep staining of edges of wounds were present.

(B) Incised wound on left elbow in the size of 15 cm x 10 cm x 4 cm posterolateral. Muscles were cut and lacerated. Liquid dark blood was oozing. All vessels were deep cut. Limb was hanging with support of skin and slight muscles. All bones were cut at the elbow level.

(C) Incised wound in the size of 9 cm x 1 cm x 2 cm on left forearm posteriorly just below.

(D) Incised wound in the size of 5 cm x 3 cm x 2 cm on right forearm posterior aspect. Muscles were cut. Bones were visible just below injury (A).

(E) Incised wound on right knee posterior aspect in the size of 7 cm x 4 cm x 3 cm. Muscles were cut. Femur bone at lower end was cut. Deep staining of edges of wounds were present.

(F) One contusion in the size of 11 cm x 2.5 cm was present on left supra scapular region and right side infra scapular region in the size of 10 cm x 2.5 cm which was dark bluish black in colour.

(G) One contusion in the size of 10 cm x 2.5 cm was present on right side of chest anterior which was bluish black in colour.

(H) One diffused contusion was present on right side of face which was bluish black in colour.

As per Dr. U. C. Sharma's evidence injured Dataram received the following injuries:-

(1) Incised wound in the size of 15 cm x 8 cm x 3 cm on left elbow posterolateral and anterior also. Blood was oozing. Left humerus was cut completely at the lower end. Muscles were divided. There was bleeding from muscles and small veins.

(2) Incised wound 3 in number from below upward right elbow posterolateral surface:-

(a) 4 cm x 2 cm x 2 cm present on right forearm posteriorly near elbow. Muscles were cut and oozing blood was present.

(b) 11 cm x 3 cm x 2 cm just above (a). Muscles were cut. Oozing blood was present and bones were visible.

(c) 7 cm x 1 cm x 1 cm on right elbow just above (b). Both forearms' bones were cut completely right side. Right humerus was cut completely.

The injuries were grievous and caused by hard and sharp weapon. Even the weapon of offence i.e. Pharsi was recovered, based on the memorandum, at the instance of accused Ramfal, axe was recovered, based on the memorandum, at the instance of accused Narottam and same were found stained with blood. Even clothes of the accused persons were also found stained with blood and as per reports of F.S.L. Ex.-P/57, Ex-P/58 and Ex.-P/59 human blood was present on these

articles. As the evidence of injured eyewitness corroborated by medical evidence, weapons of offences were recovered at the instance of the accused persons, and clothes of the accused persons were stained with human blood, therefore, evidence of eyewitnesses inspire confidence of the Court and involvement of the accused/appellants in crime in question is established by any shadow of doubt.

14. The accused/appellants committed murders of Ram Nath and Ran Sai brutally. It has come in the evidence that criminal case was already pending between the parties and an attempt was made to compromise the matter, but same could not be settled, therefore, on account of old animosity when the matter could not be compromised, the accused/appellants attacked the deceased persons and injured person, therefore, motive is also established.

15. For the foregoing reasons, conviction is based on legal clinching evidence and we do not find any illegality and infirmity in the judgment of the trial Court.

16. In the result, the appeal fails and same is dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Barve